

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of

**JAMMIE'S ENVIRONMENTAL,
INC.,**

**For Authority to Operate as a Solid
Waste Collection Company in
Washington**

Docket TG-220243

BASIN DISPOSAL, INC.,

Complainant,

v.

**JAMMIE'S ENVIRONMENTAL,
INC.,**

Respondent.

Docket TG-220215

**PACKAGING CORPORATION OF AMERICA
OPENING BRIEF**

JANUARY 18, 2023

PACKAGING CORPORATION OF AMERICA

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PACKAGING CORPORATION OF AMERICA

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I. INTRODUCTION

1. Packaging Corporation of America (PCA) is a large national pulp, paper, and packaging manufacturing company. PCA employs approximately 430 employees in Walla Walla County and operates 24 hours a day. PCA makes boxes, used here regionally and throughout the country. Having a competent, dependable, and safe contractor is critical to the success of its operation and having a say as to who and which contractors can provide the service that PCA needs is exactly why PCA intervened in this case.¹ The outcome of these consolidated cases has a direct and material impact on how PCA operates.²

2. Basin Disposal Incorporated's (BDI) service started organically because BDI hauls garbage for PCA at its Wallula mill (Mill). PCA spent months designing and setting up its old, corrugated container (OCC) plant and was looking forward to collaborating with BDI regarding disposal of OCC Rejects. As PCA's initial plans developed, PCA used a method known to BDI: hauling with dumpsters. As each month went by, PCA continually asked for faster hauling and a different method of hauling. What PCA got was growing oversized piles of waste, fire hazards, traffic flow and visibility issues, and broken equipment. The cumulative effect of these issues forced Mill Manager, Kurt Thorne, to consider slowing down production at PCA's OCC Plant to allow BDI time to catch up, haul the waste to the landfill, and for PCA to clean up the OCC Reject piles.³ Ultimately, PCA did what it had to do, find a different solution. PCA spoke with long-term contractor Jammies Environmental Incorporated (Jammie's) and found a solution. PCA believes the facts that laid out in this brief, supported by testimony and other evidence, will show that BDI is unable to perform the services needed, and the service they did provide was unacceptable. Using BDI for hauling the OCC rejects waste stream is simply not a viable option for PCA.

¹ Blancaflor, TR. 65:15-19

² Blancaflor, TR. 66:7-8

³ See Thorne, Exh. KT-1T at 7.

II. FACTS

A. The Beginning Stages were Collaborative

1. Planning Stages

3. PCA has five OCC plants, including the one at issue in this case.⁴ Before OCC production began, PCA consulted with its four other OCC plants and had several corporate experts visit the Mill to help with planning how to manage OCC rejects.⁵ At first, several options were considered. “[T]he original plan was to incinerate it in our biomass boiler. But before construction of the OCC plant even started, that boiler got converted to a natural gas burning boiler and no longer was burning biomass fuel. So, we had to find an alternate disposal method.”⁶ After the biomass boiler was converted, PCA created a model that mirrored the method of disposal PCA uses at its Filer Mill. Early in the planning phase, “[W]e bought... containers that hook on the end of the Sebright compactor and, basically, the material is extruded directly from the compactor into these boxes. BDI outfitted those boxes with their custom undercarriage so they could be hauled on their truck.”⁷
4. Just a few months before production was scheduled to begin, PCA learned the plan to use “compactor boxes” was not going to work. BDI had a hauling limit of ten tons on their trucks, and the compactor boxes, when empty, weigh six tons.⁸ This would only allow PCA to fill the compactor boxes with four tons of material, approximately half of the box full. “We investigated ways to work around the DOT restrictions and determined that BDI would need to buy a different truck with a larger axel to carry more weight.”⁹ Additionally, hauling would need to occur around the clock to keep up with production. Since BDI does not provide service 24/7, this option would be impossible.¹⁰ In December 2020, just weeks before start-up, PCA was

⁴ See Rachford, TR. 380:22.

⁵ Rachford, TR. 380:25-381:1.

⁶ Rachford, TR. 271:12-17.

⁷ Rachford, TR. 272:13-20.

⁸ See Rachford, TR. 273: 3-5.

⁹ Rachford, Exh. SR-1T at 15.

¹⁰ See Rachford, TR. 273: 4-9.

forced to come up with other alternative hauling methods.¹¹ The excerpt of Exh. SR-21X demonstrates the internal scrutiny going on at the plant at that time and the immediate need to find an alternative plan.¹²

We need to do a review of handling rejects from the OCC plant. If we produce 450 TPD of pulp, we will produce about 45 TPD of rejects. The original plan was to burn them in the hog fuel boiler, along with bark. From the beginning, that plan was not going to work, and there had to be a way to handle 45-65 TPD of rejects. I have heard that we don't have enough trucking capacity to haul off the rejects, and I also understand that the discharge point from the Sebright press is going to be too low for a large trailer. What I think will be needed is a large truck/trailer combo like we have from the sludge filter, and we may need to modify that discharge point. Also, where will we landfill this stuff? Our landfill, or a 3rd party?

Time is tight, but would like to review this afternoon before I leave so we can put a plan together. Rejects handling will be far more significant than we think, and if we don't have the system right, it can get away from us quickly.

Jeff

PCA knew it needed to get something in place, and BDI offered the dumpsters. This could not be a long term plan, but PCA did not have another option, because time was indeed tight.

2. Generating Ideas

5. Upon learning that the compact boxes was not going to work, PCA invited BDI to the plant in February 2021 to brainstorm ideas. PCA walked BDI through the entire basement of the OCC Plant, reviewed the building footprint with BDI, and showed them the spaces PCA had reserved for handling the OCC Rejects. During the meeting, PCA presented several different ideas to BDI for handling the OCC Rejects including the following:

1. Loading the OCC Rejects in the back of the building directly into trucks;
2. Using a conveyor belt truck for hauling the OCC Rejects;
3. Building a bunker in the back of the building to store OCC Rejects as there is more space in the back;
4. Using railcars to load and transport the OCC Rejects.¹³

¹¹ See Rachford, TR. 273:9-12.

¹² Exh. SR-21X at 41.

After this meeting, the take-away was clear: PCA expected BDI to evaluate options and get back to PCA with an alternative plan. “We weren’t expecting a proposal before production commenced. But, you know, we were hoping that once we gathered enough information on the -- what the rejects were like coming out, that BDI would be able to produce other ideas to us quickly after start-up.”¹⁴ PCA continued to have faith that BDI would deliver on its promise and provide PCA a solution. “We asked for a proposal in February and in March and April and May and June.”¹⁵ The first time we heard back from BDI with ideas was in July, and we didn’t receive a proposal until mid-August.¹⁶

B. As PCA’s Process Improved, BDI’s Did Not

6. One of the most contentious issues in this case is the water content of the rejects. At first, there were issues with the rejects dripping. However, those issues quickly resolved. Most of the water content issue came from the frequent upsets in the plant such as equipment failure.¹⁷
7. The Seabright is designed to produce rejects with a water content coming out around 40 percent. “Forty percent water is not too wet to haul. BDI has hauled the drop boxes with the material that’s 40 percent water [with] no issue.”¹⁸ As part of its due diligence, PCA took samples of the material coming off the Sebright press and ran density and moisture content test. PCA found that the material was around 43 percent water, which is within the design specifications of the compactor.¹⁹ At this percentage of water, the OCC rejects are damp, but not

¹³ Wilhelm, Exh. BW-1T at 6.

¹⁴ Rachford, TR. 299:5-10.

¹⁵ Rachford, TR. 344:16-17.

¹⁶ Rachford, TR. 369:6-10.

¹⁷ See Rachford, TR. 302:9-14.

¹⁸ See Rachford, TR. 294:13-15.

¹⁹ See Rachford, TR. 295:1-5.

wet. There would be nothing dripping or draining. “It’s damp. There is no material dripping from -- from the dumpster.”²⁰

8. Like any manufacturing operations, PCA experiences upset conditions in plant operations. As part of normal plant operations and especially after startup, PCA reviewed its operations to see if there were any optimization changes that could be made. And, as expected, PCA quickly got better at running the plant. “So upsets became less frequent, which reduces the very, very wet material.”²¹ Second, PCA changed the grappel’s gravity drain from one minute to six.²² Lastly, PCA changed the design of the effluent sidehill screen to filter back into the Seabright.²³ All of these optimization changes were completed by May. However, none of these changes had a material impact to the average moisture content of the rejects. When asked how the material itself changed from start-up to now, Skyler Rachford said: “I would say that the rejects are not materially different than they are today.”²⁴

C. BDI Could Not Perform

1. Dry Piles

9. Due to these changes, the moisture content in the dumpsters was not the issue. The volume of rejects generated appeared to be more of the issue for BDI. BDI could not keep up and the piles of rejects continued to grow. “BDI was already so behind and a lot of the dumpsters around the site were actually dry and ready to haul, but they just couldn’t keep up at this point.”²⁵ The timeline in the photos below speaks for itself. The entire month of May 2021, the problem continued to get worse without any solutions from BDI. The photos from May 21,

²⁰ Rachford, TR. 295:18-20.

²¹ Rachford, TR. 303:16-17.

²² Rachford, TR. 303:20-304:4.

²³ Rachford, TR. 320:11-14.

²⁴ Rachford, TR. 372:11-12.

²⁵ Rachford, TR. 304:23-25.

2021, are especially troubling because PCA was shut down for a week. This should have allowed plenty of time for BDI to clear the full dumpsters and get caught up.²⁶

10. When asked if additional drivers would have helped this issue, PCA witnesses Brian Wilhelm answered yes and Skyler Rachford answered no, but their reasoning was the same – the piles did not shrink.²⁷ “I think, really, the core issue is the method that we were using, and these dumpsters were just not working for us.”²⁸



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²⁶ See Rachford, TR. 378:4-20.

²⁷ See Rachford, TR. 338:12; *see also* Rachford, TR. 37:23-24; *See also* Wilhelm, TR. 408:11-16.

²⁸ Rachford, TR. 338:14-15.

²⁹ Exh. SR- 16X at 0028.



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³⁰ *Id.* at 0127.



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2. Safety Hazard

11. Safety is a concern for any mill, but especially for a mill that experiences extremely dry conditions and strong winds like you can in Wallula. “The growing number of piles created an unsafe environment and jeopardized the safety of our employees and community members.... These type of site conditions are not acceptable to PCA. PCA communicated this concern to BDI and BDI dismissed those concerns and seemed unaware of the fire dangers. This is an attitude we

³¹ *Id.* at 0087.

cannot tolerate.”³² With the piles getting so numerous, PCA had to temporarily cover a fire hydrant.³³ When asked what impact a fire could have, Kurt Thorne replied “It could be huge. I mean, it -- depending on how far it carried and how quickly we got it out. I mean, it’s certainly -- that’s probably the biggest concern out there. And really what -- that’s one of the things that keeps us up at night,”³⁴ BDI has spent a lot of time focused on written complaints, whereas PCA did not have time to worry about creating a paper trail. The problem required immediate attention necessitating phone calls versus e-mails. Skyler Rachford and Kasey Markland called multiple times a week and were in constant communication with BDI over these issues.³⁵ This was the true tipping point for PCA.

3. Expressed Frustration

12. PCA’s cries fell on deaf ears. PCA witness Brian Wilhelm testified that Skyler Rachford and Kasey Markland complained regularly, directly to BDI, asking for more drivers, more hauls, because BDI was not keeping up.³⁶ PCA complained in writing and in “multiple phone conversations weekly.”³⁷ When asked about communications to BDI, Brian Wilhelm replied, “I made sure that they were communicating with BDI to get extra drivers and to try to get caught up on the nature of our issue. I told both Kasey and Skyler that we had to make sure that the dumpsters were full and ready to haul at all times so that BDI did not have an excuse to not haul them.”³⁸

³² Thorne, Exh. KT-1T at 6.

³³ Rachford, Exh. SR-1T at 24.

³⁴ Thorne, TR. 239:16-20.

³⁵ Thorne, TR. 452:16-23; *See also* Rachford, Exh. SR-04 at 1.

³⁶ Wilhelm, TR. 452:16-19

³⁷ Wilhelm, TR. 452:20-21.

³⁸ Wilhelm, TR. 454:9-15

D. PCA found a Solution

1. Jammie's Generated Ideas and Solved PCA's Problem

13. PCA has a longstanding relationship with Jammie's, and Jammie's has provided a variety of services for PCA for over ten years.³⁹ "Jammie's provides several industrial cleaning and maintenance services at the Mill. This includes water blast and vacuum services in multiple areas of the Mill including the OCC Plant; cleaning tanks that need repair and maintenance; hydro excavation and repairs for line locates and new line installation; and rail services to keep tracks clean and mitigate fire dangers in the summer. Generally, when we need something cleaned up, Jammie's provides the needed services."⁴⁰

14. The pictures above, along with the testimony of Kurt Thorne, Skyler Rachford, and Brian Wilhelm, illustrate just how bad conditions were, come May 2021. PCA was not the only one noticing. Jammie's is on the Mill site almost daily and noticed the piles of rejects everywhere. Jammie's asked PCA about the situation in late May 2021. Desperate for a solution, Jammie's assisted BDI with hauling until August 2021. By September, Jammie's was able to effectively manage the entire waste stream without problem.⁴¹

2. PCA's Problem is Solved

15. Jammie's has come in, helped BDI get their piles under control, and has created a new way to manage the rejects. All the things PCA repeatedly asked BDI to do, Jammie's did in just a few short months. "Jammie's blends, rotates, and mixes the OCC Rejects so that the drying process moves quickly, ensuring they eliminate the moisture. Jammie's does all the loading of OCC Rejects into the trailer throughout the day."⁴² Because the onsite mixer and the hauler is the same person, they are able to monitor the water content level and ensure there is enough dry

³⁹ Scott, Exh. JDS-1T at 8:12.

⁴⁰ Rachford, Exh. SR-1T at 30.

⁴¹ See Rachford, Exh. SR-1T at 31.

⁴² Rachford, Exh. SR-1T at 33.

material to mix and haul away timely. Photos below illustrate the fitness of Jammies to handle this waste stream.



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⁴³ Exh. SR-16X at 0065.



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⁴⁴ Exh. SR-16X at 0066.

⁴⁵ Exh. SR-16X at 0112.

III. BDI'S SERVICE IS FAR BELOW THE COMMISSION'S STANDARD FOR SATISFACTORY SERVICE

A. BDI Did Not Meet Commission Standards

16. PCA supports Jammie's application for a Class C solid waste certificate and has provided abundant evidence that Jammie's can provide the required service in a safe and effective manner. But before the Commission may grant Jammie's application, the Commission must determine whether BDI provides such service to the satisfaction of the Commission.⁴⁶ The Commission has broad authority and discretion to determine if a company is providing service to its satisfaction.⁴⁷ While this decision is undisputedly one for the Commission, not the generator, the Commission should give considerable weight to the needs of PCA regarding this specific industrial waste stream.
17. In *Stericycle*, the Commission recognized that biomedical waste is different than residential garbage waste and, therefore, the Commission gave "considerable weight" to testimony of the waste generators regarding what services they required.⁴⁸ Here, like in *Stericycle*, OCC Rejects are undeniably different than typical neighborhood garbage collection. The weight, volume, and nature of the industrial waste fluctuates, and it often requires processing to prepare it for disposal, as well as larger trucks to haul it. There is no dispute that OCC Rejects are unlike typical neighborhood garbage collection, and BDI acknowledges that OCC Rejects are unlike even other commercial and industrial waste streams because of their large volumes.⁴⁹ The volume became BDI's Achilles's heel. BDI simply does not have the resources necessary to match the volume of OCC Rejects PCA generates.
18. Since industrial OCC Rejects are unlike residential neighborhood garbage collection, *Stericycle* calls for the Commission to give great weight to PCA's testimony regarding the needs

⁴⁶ See RCW 81.77.040.

⁴⁷ *Stericycle of Washington Inc. v. Washington Utilities & Transp. Comm'n*, 190 Wn. App. 74, 87, 359 P.3d 894, 900 (2015).

⁴⁸ *Id.* at 79, 896.

⁴⁹ See Dietrich, Exh. CD-1Tr at 3:20-22.

of its industry and whether BDI provides PCA satisfactory service. For that answer, there can be no doubt. PCA went to BDI first, months before the OCC Rejects work began, but despite more than six months and multiple opportunities, BDI remains both unable and unwilling to provide even the lowest, most basic level of service related to OCC Rejects.

19. Because BDI hauls PCA's lunchroom garbage, general office trash, and typical solid waste at the Mill, PCA initially assumed that BDI would be equipped and able to dispose of the OCC Rejects. PCA gave BDI months of advance notice of the type and amount of OCC Rejects that PCA would be generating. BDI could have immediately begun preparations for the new work, but there is no evidence or even implication in the record that BDI prepared in any way for the substantial increase in work. Specifically, after the December 2020 meeting between PCA and BDI it was clear that BDI would need a larger truck because of load limitations.⁵⁰ BDI could have immediately purchased or leased a larger truck, but it did not. BDI could have begun hiring new drivers, adding more equipment, or moving containers on site to prepare for the substantial increase in work it knew was coming, but BDI did none of that. Closer to the date of starting the production, PCA and BDI met again. On February 25, 2021, more than two months after the December meeting and days before production began, BDI still had not delivered a sufficient number of containers and were in the process of "bringing some containers from our other location".⁵¹ Later, in August 2021, BDI informed PCA that they can't change the method of hauling (using the dumpsters), until they obtained approval from the Commission to even begin this "new type of haul".⁵² Strangely, BDI changed its mind without any explanation, and now BDI demands to perform this "new type of haul" without a Commission-approved tariff for it. These contradictions are very confusing to PCA. However, what is not confusing is BDI's inability to provide the service PCA requires to remain in production. Where Jammie's has

⁵⁰ Rachford, Exh. SR-1T at 15. "We investigated ways to work around the DOT restrictions and determined that BDI would need to buy a different truck with a larger axel to carry more weight."

⁵¹ Exh. SR-2 at 2.

⁵² Exh. BW-3 at 1.

proven both able and willing to provide services to keep up with PCA, BDI has always viewed the OCC Rejects as PCA's problem, the solution to which is to simply slow down production so that BDI could keep up.⁵³ That is unacceptable.

IV. THE COMMISSION SHOULD MAINTAIN THE STATUS QUO

A. Jammie's is Already Cleaning the Facility

20. The Commission can, and should, maintain the satisfactory status quo by recognizing that Jammie's haul of the OCC Rejects are a small part of its overall business, and an even smaller part of the business it performs for PCA. As stated earlier, Jammie's has been performing a variety of industrial cleaning services for PCA for over ten years. Jammie's was already on site at the Mill and observed how the OCC Rejects problem developed. Their management and hauling of the OCC Rejects has allowed PCA to continue working at a productive pace without fear of backlogs or safety issues. As stated repeatedly by the owner of Jammie's herself, Jammie's is not interested in taking over solid waste disposal from BDI; it is only seeking to provide OCC Rejects work for PCA.⁵⁴ BDI is still hauling all PCA's other solid waste generated at the Mill. No one, therefore, would be losing anything if the Commission were to maintain the status quo and allow Jammie's to continue hauling OCC Rejects. An order finding that Jammie's is exempt from the solid waste regulations is appropriate, as described below, and would maintain the current state of affairs.

B. Jammie's Disposal of OCC Rejects is Exempt Under WAC 480-70-011(1)(g)

21. Despite PCA's testimony supporting Jammie's application, PCA agrees with Jammie's position that hauling OCC Rejects is an incidental adjunct to its other larger industrial services and, as such, is exempt from Commission regulation pursuant to WAC 480-70-011(1)(g). That regulation exempts "[t]he operations of private carriers who, in their own vehicles, transport

⁵³ See, e.g., Fassburg, TR. 159:12-16.

solid waste purely as an incidental adjunct to some other established private business owned or operated by them.” “Whether or not transportation of garbage or refuse is an ‘incidental adjunct’ to some other private business is properly determined by evaluating the nature of the entire business operation, not by focusing on specific aspects of the business.”⁵⁵ As explained in *Clark Co. Disposal*, the volume or percentage of material it disposes is not determinative of whether the disposal meets the incidental adjunct exemption, rather one must look at the entire business. In *Clark Co. Disposal*, the question was whether garbage hauling was incidental to the company’s overall recycling business. In our case, the question is whether Jammie’s OCC Rejects hauling for PCA is incidental to Jammie’s overall business of industrial cleaning. The answer is yes. Jammie’s is not a waste disposal company.⁵⁶ It is an industrial cleaning company that provides services to commercial clients across the western United States.⁵⁷ It performs cleaning services for shipyards, railroads, chemical plants, gas and oil facilities and refineries, as well as pulp and paper mills.⁵⁸

V. CONCLUSION

22. PCA respectfully requests that the Commission (1) find Jammie’s hauling of OCC Rejects to be exempt from Commission regulation, and (2) dismiss BDI’s complaint. Alternatively, PCA requests the Commission grant Jammie’s application for a Class C solid waste certificate and dismiss BDI’s complaint.

⁵⁴ See Scott, Exh. JDS-1T at 23:20-21.

⁵⁵ *Clark Cnty. Disposal, Inc., d/b/a Vancouver Sanitary Serv. & Twin City Sanitary Serv. (G-65); & Buchmann Sanitary Serv., Inc. (G-79), Complainants, v. Env’tl. Waste Sys., Inc., & R & R Transfer & Recycling, Inc., Respondents.*, TG-2195, 1989 WL 1786672, at *1 (1989).

⁵⁶ Scott, Exh. JDS-1T at 4:11.

⁵⁷ Scott, Exh. JDS-1T at 3:20-21.

⁵⁸ Scott, Exh. JDS-1T at 4:1-2.

DATED this 18th day of January 2023.

Respectfully submitted



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